IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

APPEAL NO. 431 OF 2004
IN
COMPANY PETITION NO.120 OF 2004
CONNECTED WITH
COMPANY APPLICATION NO.540 OF 2003

Shri Rasik S. Poladia — Appellant

vs.

1. Larsen & Toubro Ltd. & Ors. — Respondents.

Mr. A.K. Abhyankar with Mr.S.K. Jain and Mr.A.V. Jain for the appellant.

Dr.Virendra Tulzapurkar, senior counsel with Mr.Ravi Kadam and Mr.Vikram Trivedi and Ms. Rajashree Bhat i/b. M/s. Manilal Kher Ambalal & Co. for the respondent no.1.

Mr.Iqbal Chagla, senior counsel with Mr.Birendra Saraf and Mr. Arun Siwach i/b. M/s.Amarchand & Mangaldas & S.A. Shroff & Co. for the respondent no.2.

Mr.Janak Dwarkadas, senior counsel with Mr.Prashant Beri i/b. M/s.Beri & Co. for the respondent no.3.

Mr.Sandeep Parikh i/b. M/s.Amarchand & Mangaldas & S.A.Shroff & Co. for the respondent no.4.

Mr.Virag V. Tulzapurkar i/b. M/s.Manilal Kher & Ambalal & Co. for the respondent no.5.

ALONG WITH
APPEAL NO.457 OF 2004
IN
COMPANY PETITION NO.120 OF 2004
CONNECTED WITH
COMPANY APPLICATION NO.540 OF 2003

Shri Vishweshwar M. Raste — Appellant

vs.

1. Larsen & Toubro Ltd. & ors. Respondents

Shri V. M. Raste appellant in person.

Dr.Virendra Tulzapurkar, senior counsel with Mr.Ravi Kadam and Mr.Vikram Trivedi and Ms. Rajashree Bhat i/b. M/s. Manilal Kher Ambalal & Co. for the respondent no.1.

Mr.Janak Dwarkadas, senior counsel with Mr. Prashant Beri i/b. M/s.Beri & Co. for the respondent no.2.

Mr.Sandeep Parikh i/b. M/s.Amarchand & Mangaldas and S.A.Shroff & Co. for the respondent no.3.

Mr.Iqbal Chagla, senior counsel with Mr.Birendra Saraf and Mr.Arun Siwach i/b. M/s. Amarchand & Mangaldas & S.A.Shroff & Co. for the respondent no.4.

Mr. A.C. Singh with Mr.R.C. Master for the respondent no.5.

Mr. Virag Tulzapurkar i/b. M/s.Manilal Kher Ambalal & Co. for the respondent no.6.

ALONG WITH
APPEAL NO. 458 OF 2004
IN
COMPANY PETITION NO.121 OF 2004
CONNECTED WITH
COMPANY APPLICATION NO. 566 OF 2003

Shri V.M. Raste Appellant

vs.

1. UltraTech Cemco Ltd. & ors. Respondents

Shri V. M. Raste appellant in person.

Mr.Iqbal Chagla, senior counsel with Mr.Birendra Saraf and Mr.Arun Siwach i/b. M/s.Amarchand & Mangaldas & S.A.Shroff & Co. for the respondent no. 1.

Dr.Virendra Tulzapurkar, senior counsel with Mr.Ravi Kadam and Mr.Vikram Trivedi and Ms. Rajashree Bhat i/b. M/s. Manilal Kher Ambalal & Co. for the respondent no.2.

Mr.Janak Dwarkadas, senior counsel with Mr. Prashant Beri i/b. M/s.Beri & Co. for the respondent no.3.

Mr.Sandeep Parikh i/b. M/s.Amarchand & Mangaldas and S.A.Shroff & Co. for the respondent no.4.

Mr. A.C. Singh with Mr.R.C. Master for the respondent no.5.

Mr. Virag Tulzapurkar i/b. M/s.Manilal Kher Ambalal & Co. for the respondent no.6.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 20th September 2004

P.C.

These three appeals arise out of the judgment dated April 22, 2004 passed by the learned Company Judge sanctioning Scheme of Arrangement between Larsen & Toubro Limited and their respective shareholders and creditors and Grasim Industries Limited as a shareholder of Larsen & Toubro Limited and Larsen & Toubro Employees Foundation and, therefore, these three appeals were taken up together for motion hearing.

2. The appellants were interveners/objectors before the learned Company Judge and objected to the Scheme of Arrangement. In the appeal filed by Shri Poladia, the learned counsel appearing for him challenged the order of the learned Company Judge on diverse grounds interalia: (i) that the company was guilty of non-disclosure of material particulars, particularly restructuring agreement; (ii) the incorrect statements

were made; (iii) in fact there was no valuation report as contended by the company and (iv) the small/retail shareholders formed the class of its own and, therefore, the separate meeting ought to have been called. The learned counsel also handed in compilation of judgments.

3. The other two appeals have been filed by Shri V.M. Raste, who appeared in person and contended that the learned Company Judge did not give him adequate and sufficient opportunity of hearing and, thus, principles of natural justice were infracted. His affidavit was not at all considered and so also the written submissions filed by him before the learned Company Judge. He submitted that the entire Scheme was fraud on shareholders like him.

4. It is not in dispute before us that the Scheme of Arrangement sanctioned by the learned Company Judge was fully implemented by the second week of May 2004. All these appeals have been preferred after the Scheme of Arrangement sanctioned by the learned Company Judge was implemented. Shri V.M. Raste filed the appeal no.457/2004 on 9th June 2004 and appeal no.458/2004 on 14th June 2004 while the other appellant Shri R.S.Poladia filed the appeal no.431/2004 on 11th June 2004.

5. Having considered the objections of the appellants, we find that this is not a fit case for entertaining the appeals. As already noticed above, the Scheme of Arrangement sanctioned by the learned Company Judge has already been implemented.

6. Some of the conclusions arrived at by the learned Company Judge are thus:

> "(c) All the resolutions have been passed unanimously and/or by overwhelming majority in proportion [00.01 x 99.99] and the Scheme of arrangement has been approved accordingly with due deliberation and discussion on all issues, including the suggested modifications.
>
> (d) The Regional Director, Company Registrar - all these authorities have, after due verification of the record of the company, endorsed and reconfirmed that the Scheme is not against public interest, prejudicial to shareholders and all actions of the companies are within the framework of law. There is nothing illegal, unjust, unsound or against public policy or interest. No other department have raised any objection.
>
> (e) All the experts/professionals submitted their Report and opinion and accepted the Scheme. These experts/professionals include Financers, Auditors, Chartered Accountants, Bankers, Creditors, Financial Institutions and above all company Managements, apart from unanimous majority decisions to support the scheme.
>
> (f) Once creditors, financial institutions, expert in respective business and professionals, approved the Scheme (of arrangement) unanimously by overwhelming majority of shareholders in proportion to 99.99 x 00.1, and also approved the Scheme after due and effective deliberation on all issues and satisfied by all the classes, in my view also, such determination and/or

> commercial merits of the Scheme need not be gone into or interfered with as a fault finder and/or to pick holes in it, merely because some objections have been taken or raised by some shareholders. There are no strong and cogent reasons made out and pointed out by any one, to disapprove such Scheme. No other objectors have pressed their objections or appeared in Court to support such objections."

7. As regards the objection of non-disclosure of restructuring agreement, we find that the restructuring agreement was made available for inspection by the Company at its registered office. Though the company did not supply the copy of the re-structuring agreement to the objectors, there was no impediment in the objectors inspecting the said restructuring agreement at the registered office of the company. The objection raised by the learned counsel that there ought to have been separate meeting of small shareholders as they constituted a different class is not meritorious. Suffice it to observe that from the available material it does not transpire that in the Scheme of Arrangement any distinct or special provision was made for the retail/small shareholders. No separate rights were created under the Scheme for retail/small shareholders. Besides that there is nothing on record to indicate that the interest of the large equity shareholders was in conflict with the retail/small shareholders. The judgment of the Supreme Court in the case of Miheer H. Mafatlal v. Mafatlal Industries Ltd., 1996 Company

Cases (Vol. 87) 792 relied upon by the learned counsel for one of the appellants has no application. The contention that there was no valuation report and that incorrect statements were made by the company has no substance.

8. The submission of the appellant-Shri Raste that he was not afforded adequate and sufficient opportunity by the learned company Judge is unfounded. The proceedings before the Company Judge speak otherwise. All in all, we find that the conclusions arrived at by the learned Company Judge cannot be said to suffer from such legal infirmity warranting interference in appeal. Moreover, the scheme sanctioned by the learned Company Judge has already been implemented and, therefore, we are satisfied that no interference is called for in the impugned judgment.

9. All these appeals are dismissed in limine.

Certified copy expedited.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)